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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 SIDNEY DONALD JENKINS, III,

11 Plaintiff,

12 v.

13 ROBOT KAY, et al.,

14 Defendants.

CASE NO. 3:18-cv-05049-BHS-JRC

ORDER DENYING MOTION TO  
COMPEL

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16 The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United  
17 States Magistrate Judge J. Richard Creatura. *See* Dkt. 2. Plaintiff has filed a “Motion To  
18 Compel[] Discovery Pursuant to Fed. R. Civ. P. 37(a)(2).” *See* Dkt. 39. Because plaintiff did  
19 not certify in his motion to compel that he met the requirement to meet and confer with the  
20 opposing party, his motion is denied.

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1 **BACKGROUND**

2 Plaintiff, who is housed at Clallum Bay Corrections Center (“CBCC”) (Dkt. 16, at 5),  
3 brought this action against fourteen staff members of the Department of Corrections, alleging  
4 that they violated the First, Eighth, and Fourteenth Amendments because they attempted to serve  
5 him unsafe food and refused to provide alternative meals. *See* Dkt. 16, at 7. The Court ordered  
6 service of an amended complaint on defendants, including a defendant—“Gibson”—whom  
7 plaintiff had identified by last name only. *See* Dkt. 16, at 5.

8 An assistant attorney general (the “Assistant AG”) entered a notice of appearance for  
9 nine of the defendants on August 13, 2018 and then for three more defendants on September 10,  
10 2018. *See* Dkts. 20, 30. However, no attorney entered a notice of appearance for the remaining  
11 defendant—“Gibson.” *See* Dkt. After receiving plaintiff’s requests for production on August  
12 27, 2018, which were addressed to all “Defendants,” the Assistant AG informed plaintiff that the  
13 Assistant AG could not accept service of discovery on behalf of individuals whom he did not  
14 represent. *See* Dkts. 39, at 7; 41-1, at 11.

15 In response, plaintiff wrote the Assistant AG and refused to change his discovery  
16 requests, contending—erroneously—that the answer was filed by all defendants. *See* Dkts. 34,  
17 41-1, at 14. The Assistant AG responded that this was incorrect and that the thirteen defendants  
18 would not respond unless plaintiff revised his requests. *See* Dkt. 39, at 24.

19 Plaintiff did not respond, instead filing this motion to compel on the same day as the  
20 deadline to complete discovery. *See* Dkts. 38, 41, at 2. After receiving plaintiff’s motion, the  
21 Assistant AG provided kiosk messages responsive to plaintiff’s discovery requests but “made it  
22 clear to [plaintiff] that [the thirteen defendants were] not waiving any argument about whether  
23 his original discovery requests were properly propounded.” Dkt. 41, at 3.  
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## DISCUSSION

Plaintiff requests that this Court find that the thirteen defendants failed to provide any legitimate reason to withhold discovery and order “[c]ounsel for the defense” to respond to his discovery requests. *See* Dkt. 39, at 4–5.

Rule 37(a)(1) of the Federal Rules of Civil Procedure requires that a party seeking to compel discovery include in the motion a certification that the moving party “has in good faith conferred or attempted to confer” with the party failing to make disclosures. Similarly, Local Civil Rule 37(a) requires a party who files a motion to compel to first “meet and confer” with the opposing party:

(1) *Meet and Confer Requirement.* Any motion for an order compelling disclosure or discovery must include a certification, in the motion or in a declaration or affidavit, that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. If the movant fails to include such a certification, the court may deny the motion without addressing the merits of the dispute. A good faith effort to confer with a party or person not making a disclosure or discovery requires a face-to-face meeting or a telephone conference.

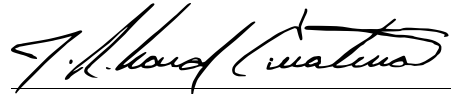
Plaintiff’s failure to certify that he “in good faith conferred or attempted to confer with” defense before filing his motion to compel is, alone, sufficient for this Court to deny his motion. Although plaintiff is proceeding *pro se*, he is required to read and comply with the Local Rules, the Federal Rules of Civil Procedure, and the court’s orders. *See McNeil v. United States*, 508 U.S. 106, 113 (1993) (“[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.”).

It should be noted that meeting and conferring to discuss this issue was especially appropriate here, where it seems apparent that the twelve defendants who are represented were the only ones who were in a position to respond to plaintiff’s discovery. The remaining

1 defendant, who has not been completely identified and who had not otherwise appeared, is not  
2 currently subject to the jurisdiction of the Court. Therefore, the resolution of this issue appears  
3 self-evident. The parties should have met and conferred in an attempt to resolve this issue.

4 Thus, in accordance with Local Civil Rule 37(a)(1) and Federal Rule of Civil Procedure  
5 37(a)(1), this Court **DENIES** plaintiff's motion to compel (Dkt. 39).

6 Dated this 2nd day of April, 2019.

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10 J. Richard Creatura  
11 United States Magistrate Judge  
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